Federal Court  Cour fédérale

Date: 20230417

Docket: IMM-7634-21
IMM-8808-21

Citation: 2023 FC 559

Ottawa, Ontario, April 17, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

NYASHA KIMBERLY TANYANYIWA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Zimbabwe. She fled to the United States of America with her parents when she was 13 years old. Fearing deportation under the previous United States government, the Applicant fled to Canada on her own in 2017 and made a claim for refugee protection, which was denied.

[2] The Applicant subsequently filed an application for permanent residence on humanitarian and compassionate [H&C] grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Her application was denied by a Senior Immigration Officer [H&C Officer] on January 8, 2020 [H&C Decision]. Between the period of time the H&C Officer determined her application and communicated the decision to the Applicant (a period of about 22 months), she filed several supplementary submissions, unaware the decision had been made.

[3] After the H&C Decision was communicated to her, the Applicant submitted a request for reconsideration based on the intervening submissions that were not considered by the H&C Officer. The Reconsideration Officer concluded that after a review of the additional submissions, the initial decision remains unchanged [Reconsideration Decision].

[4] The Applicant seeks judicial review of both decisions.

[5] The sole issue in both matters is whether the decision was reasonable. Stated another way, the Court must determine whether the decisions are intelligible, transparent and justified, further to the applicable, presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25, 99.

[6] For the reasons below, I am not persuaded the Applicant has met her onus for both matters: *Vavilov*, above at para 100. I therefore dismiss these judicial review applications.

II. Analysis

A. *H&C Decision*

[7] There were three factors at play in the H&C Decision, which I address in turn below: establishment in Canada, hardship if returned to Zimbabwe, and the best interests of the children [BIOC], namely, the Applicant's nieces and nephews in Canada.

(1) Establishment

[8] I am not persuaded that the H&C Officer's treatment of establishment is unreasonable. The reasons permit the Court to understand the Officer's rationale for the weight assigned this factor.

[9] The Officer reviewed the evidence concerning the Applicant's family in Canada, her employment, her volunteer work and extracurricular activities. It was open to the Officer to determine these all are positive factors but to give establishment overall little weight for the reasons expressed. I am satisfied, contrary to the Applicant's submissions, that the Officer considered the potential disruption to her establishment. The Officer noted, for example, the lack of evidence that the Applicant could not pursue these activities in Zimbabwe.

[10] Further, the Officer did not find that her establishment was weakened because of her ties to Zimbabwe in contrast to Canada, as asserted by the Applicant. Rather, the Officer reasonably summarized the evidence provided about where the Applicant's family lives. In my view, the

Officer did not undertake an analysis with respect to how the Applicant's family ties to Zimbabwe may or may not outweigh her establishment in Canada, nor was the Officer required to do so.

(2) Hardship

[11] In my view, the Officer's treatment of this factor reasonably turned on insufficiency of evidence, including a lack of evidence about her father's refugee claim in the United States based on his ties to the opposition political party, Movement for Democratic Change [MDC] in Zimbabwe and the Applicant's own asserted involvement with the group. The Officer noted, for example, the lack of a membership card for the Applicant, notwithstanding that her parents' membership cards were in evidence.

[12] I find further that the Officer cannot be faulted for not considering an argument the Applicant did not make in her H&C submissions, and hence, is impermissibly before the Court, namely that she would be perceived as holding the same political views as her parents. More to the point, the Officer again noted the lack of evidence, this time regarding whether the Applicant has become involved with the MDC or politics in Zimbabwe since arriving in Canada.

[13] The Applicant's submissions about the Officer's treatment, in the context of hardship, of her time away from Zimbabwe and her family ties to her home country amount, in my view, to disagreement with how the Officer weighed the evidence. Despite submissions to the contrary, I find that the Applicant essentially entreats the Court to reweigh the evidence that was before the Officer, which is not the role of the Court on judicial review: *Vavilov*, above at para 125. I add

that just because it was open to the H&C Officer to draw another inference about the Applicant's family ties in Zimbabwe, does not mean that the Officer's assessment was flawed: *Krishnapillai v Canada (Minister of Citizenship & Immigration)*, 2007 FC 563 at para 11; *Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at para 43.

[14] In addition, the Applicant has not demonstrated, in my view, how the Officer erred in finding a lack of evidence linking the evidence of adverse country conditions to the Applicant personally: *Paramanayagam v Canada (Citizenship and Immigration)*, 2015 FC 1417 at para 19. The Officer's finding is premised on the lack of evidence about where the Applicant would live upon return to Zimbabwe or how her family members living there are affected by the conditions. Rather, I find the Officer reasonably considered the extent and nature of any hardship the Applicant may face on return to Zimbabwe by connecting the general country conditions to her demonstrated skills and family support: *Vujovic v Canada (Citizenship and Immigration)*, 2022 FC 1301 at para 32.

(3) BIOC

[15] I also find that the Applicant has not shown that the Officer erred in a material way in light of the evidence on file when the decision was made in January 2020. While the Officer overstated that the Applicant's nieces and nephews (her sister's and cousin's children) were not dependent on her, the Officer nonetheless considered the time the Applicant spent minding the children (evenings and weekends). The overstatement in my view is an insufficient basis on which to grant the judicial review. As the Officer noted, because the Applicant worked full time,

she was not the children's caregiver. The Officer further found there was insufficient evidence to demonstrate how the children would be impacted by separation.

[16] Although the H&C Officer did not mention specifically that the Applicant resided with her sister and young niece, the updated evidence before the Reconsideration Officer shows that no longer is the case. Were this matter sent back for redetermination by a different H&C officer, the issue would be moot, in my view, in light of the Applicant's evidence of her new living arrangements that would be before the officer, that is apart from her sister and the sister's children. In other words, it would serve no useful purpose in my view to remit the matter for redetermination by an H&C Officer on this basis: *Vavilov*, above at para 142.

B. *Reconsideration Decision*

[17] Turning next to the Reconsideration Decision, although it could have been worded more clearly, I am satisfied the Officer denied the request to reconsider, and did not engage in a reconsideration of the H&C application, contrary to the Applicant's submissions. I also am persuaded that despite its brevity, the Reconsideration Decision is not unreasonable in the circumstances.

[18] "Even in the absence of extensive or any reasons, the priority on reasonableness review is to 'look to the record as a whole to understand the decision' and uncover the underlying rationale" *Ali v Canada (Citizenship and Immigration)*, 2022 FC 1638 at para 34, citing *Vavilov*, above at paras 77, 137. As the Federal Court of Appeal guides, "all a reviewing court can do is assess the reasonableness of the outcome the administrative decision-maker reached using

surrounding documents and circumstances and whatever bits of reasoning or rationale, if any, it has before it": *Portnov v Canada (Attorney General)*, 2021 FCA 171 at para 54.

[19] There is no dispute that the settled jurisprudence describes a two-step process for dealing with a request to reconsider. As a first step, the officer must consider whether to "open the door to a reconsideration," and if the officer so decides, the second step is to reconsider the decision on its merits: *A.B. v Canada (Citizenship and Immigration)*, 2021 FC 1206 [*A.B.*] at para 21; citing *Canada (Citizenship and Immigration) v Kurukkal*, 2010 FCA 230 at para 5.

[20] The parties here disagree whether a decision was taken at the first step, as argued by the Respondent, or at the second step, as argued by the Applicant. I am satisfied that the Officer here did not move beyond the first step. As remarked by Justice Pentney, "[i]t is inevitable that an officer will need to examine the reasons put forward to re-open a decision, and this will entail some consideration of the submissions of an applicant about why it is in the interests of justice or necessary in the circumstances to reconsider the original decision": *A.B.*, above at para 31.

[21] I find that this is precisely what the Officer here did, when noting "after a review of the additional submissions." Unlike the situation that Justice Walker considered in *Katumbus v Canada (Citizenship and Immigration)*, 2022 FC 428 at para 18, the Officer here did not mention any of the factors considered in the H&C application, nor engage in any analysis of those factors. The Officer simply indicated that "the initial decision to refuse your H&C application remains unchanged." This is a logical conclusion of declining to reconsider the H&C Decision. Brief though the Reconsideration Decision is, and having reviewed the Applicant's additional

submissions against the backdrop of the initial H&C submissions, I find the Reconsideration Decision is consistent with a denial of the request to reconsider, and as mentioned, not unreasonable in the circumstances.

III. Conclusion

[22] These matters serve as a reminder that "the written reasons given by an administrative body must not be assessed against a standard of perfection": *Vavilov,* above at para 91.

[23] For the above reasons, I therefore dismiss the Applicant's judicial review applications.

[24] Neither party proposed a question for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-7634-21 & IMM-8808-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review applications are dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Monique Ann Ashamalla	FOR THE APPLICANT
Brendan Stock	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Monique Ann Ashamalla Ashamalla LLP Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT